

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DURAVEST, INC.,

Plaintiff,

- against -

VISCARDI, AG, WOLLMUTH MAHER &
DEUTSCH, LLP, MASON H. DRAKE, ESQ., BRUCE
O'DONNELL, CPA, BRUCE O' DONNELL
CPA/PFS, P.A., BIOMEDICAL CONSULTANTS SL,
RICHARD MARKOLL, and ERNESTINE BINDER
MARKOLL,

Defendants.

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Electronically Submitted

AMENDED
NOTICE OF MOTION

07 Civ. 10590 (JSR)

PLEASE TAKE NOTICE that upon the accompanying Amended Declaration of Stephen Jacobs and Amended Memorandum of Law, defendants Bruce O'Donnell, CPA and Bruce O'Donnell CPA/PFS, P.A. (together "O'Donnell"), shall move this Court, before the Honorable Jed S. Rakoff, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, on March 17, 2008 at 4:00 p.m., to dismiss (1) the claim of plaintiff Duravest, Inc. under the Racketeer Influenced and Corrupt Organizations Act pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure ("FRCP"); (2) plaintiff's three state law claims and the cross-claims of Wollmuth Maher & Deutsch, LLP, and Mason Drake, Esq., against O'Donnell for lack of subject matter jurisdiction, pursuant to FRCP 12(b)(1) and 28 U.S.C. § 1367; and (3) in the alternative, plaintiff's fraud and breach of contract claims for failure to state a claim, pursuant to FRCP 12(b)(6) and 9(b), and for such other and further relief as this Court deems just and proper.

As set forth in the accompanying memorandum of law, plaintiff's RICO claim is deficient in multiple respects, including, failing to adequately allege a RICO "enterprise", "participation" by O'Donnell, a "pattern" of racketeering activities, predicate acts, or a conspiracy; the Court should decline to exercise supplemental jurisdiction over the state law claims against O'Donnell; and, should it exercise such jurisdiction, plaintiff's fraud and breach of contract claims should be dismissed.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's directive, answering papers, if any, shall be served no later than March 3, 2008, and reply papers, if any, shall be served by no later than March 10, 2008. Oral argument is scheduled for March 17, 2008 at 4 p.m.

Dated: New York, New York
February 12, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By:



Stephen Jacobs (SJ 4437)
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